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of Björnson as a poet. For wellnigh a century Norway has been clamoring for a national literature, and every new author who appeared since the year 1814 has hastened to exhibit the *national* colors and to emblazon the beloved word upon his phylactery. Henrik Wergeland, as we have seen, spanned the earth and the sky, rose to heaven and descended to hell, all in search of his own precious nationality ; and failing to find it, at last contented himself with declaiming upon the greatness of what he did but imperfectly understand, and which for want of a better phrase was called “ the ancient, sea-engirdled Norway.” Welhaven’s voice had a truly national ring when he sang the praises of mountain, valley, and fjord ; but Björnson saw in the rugged Norwegian peasant the true type of the national greatness, and pressing his ear close to the nation’s heart he heard the throbs of its hidden emotions. And when he raised his voice and sang, every Norseman felt as if the voice were his own, as if the words had welled forth from his own inmost soul. Therefore in Bjørnstjerne Björnson has Norway found her national poet.

HJALMAR HJORTH BOYESEN.

ART. VI. — THE RATIONALE OF THE OPPOSITION TO CAPITAL PUNISHMENT.

IN Burke’s “ Celebrated Trials of the Aristocracy,” it is related that when the young Lord Altham was a slave near Philadelphia, and was running away from his master, he fell in with a man and woman riding upon the same horse. The young lady had been forced to marry somebody against her will, and the pair of lovers, taking with them some money which was not their own, were hurrying away from an angry father and a deserted husband. They invited Altham to partake of their meal by the roadside ; and while they were eating their pursuers came upon them and they were taken to Chester. The young woman and her lover were tried for theft and hanged. A hundred and fifty years ago this happened just outside of Philadelphia, quite as a matter of course, which reads oddly

to persons who have heard of Mrs. Fair's lectures. Gilly Williams writes to George Selwyn: "I called yesterday on my Lady (Townshend), and she is going to have an execution of her own. Draper, the butler, has turned out the d—dest thief in the world. She says she finds several hundred pounds unpaid which he ought to have discharged. He has fled for the same, but Mr. Fielding and his myrmidons are after him; and, her ladyship not being very compassionate, he must go to the gallows." From this it would appear that ladies of that day might discuss over the breakfast-table the *pros* and *cons* of the hanging of an old butler who had run away with some money.

There is one thing, at least, which this age has learned to do: it can pity. The change which has come over us, by whatever adjective it may be described, is none the less a fact which it is necessary to accept, and with which it is idle to expostulate. It may be asked, now, what has the sentimental as distinguished from the experimental opposition to capital punishment to say for itself. It is plain that hanging is "impossible." We need not call it a "relic of the dark ages"; it is simply *passé*. As a means of punishment in good working order, it has been rendered impracticable. Society cannot be kept up to it; the public is generally very glad to sneak out or to cheat itself out of an execution, if it can. But every now and then, say once in two years, murders occur very rapidly, the newspapers become vehement and the governors inexorable. At such a time any man under sentence of death will be likely to suffer; but the public attention will soon be diverted, the pendulum will swing back. A permanent reform in the direction of rigor and thoroughness, however much it may be desired, is simply out of the question. We must either stop executions at once, or go on hanging in our slack, inefficient manner, until the executions stop themselves. The opponents of the death penalty, knowing it to be "impossible" and useless, and necessarily slovenly and capricious in its administration, have a right to take its horribleness into account as a reason for its immediate discontinuance. The great mass of people, the country through, I suppose, hold the question in abeyance; most men who have strong opinions upon the subject are op-

posed to executions. And yet we go on hanging people in this absent-minded, mechanical manner, because we seem to find no appropriate place to stop. We condone the few executions that take place with the reflection that these are to be the last of them. But this does not make it a bit better for the men who are hanged. On the contrary, it must be particularly trying to be executed under the present state of things. An intelligent culprit must reflect bitterly that all this altered public sentiment goes for naught. The compunctions of the sheriff and the sympathy of the newspaper reporters rather aggravate the case. No man can do more than die, nor could have done any more in the days before Sir Samuel Romilly. He is to be put to death just like any old-time malefactor who never dreamed of such luxuries as the public petitions for his reprieve, the condolence of the clergy, and the tears of the sheriff. I do not intend in this paper to consider the question of the expediency of hanging. There are half a dozen facts one may count on one's fingers which go far towards proving its retention unnecessary. A great empire like Russia does without it; commonwealths like Michigan and Wisconsin have abolished it, and do not return to it; while its abolition has succeeded in many places, I have yet to hear of a case in which it has been tried and failed; if we try it and fail, twenty-four hours' legislation will put us back where we are. These points I merely name in passing; my object is to show that hanging is a very extraordinary and terrible thing. I do not oppose it, let me here remark, because it is terrible; but I say that because it is terrible we should see to it that there is some terrible necessity for it. I wish to remind the reader how strange a thing it is to be hanged. I wish to point out a few of the accidents of capital executions, and to describe and examine some impressions that control our own thinking about them.

One is struck by the caprice and inequality seen everywhere in the administration of the capital sentence. I have referred to the fact that the public mind is not very lofty and solemn in its thinking upon this subject. I have said that it continues to hang because it has not definitely decided not to hang, and that it administers this awful punishment in an "absent-minded and mechanical" manner. It would seem

the height of levity and sacrilege to lay hands in such a frame of mind upon the mysteries of death and the future state. It would be especially dreadful for men to bring into this thing the shiftlessness, haste, and triviality they exhibit in their ordinary concerns. However they may feel towards the general question, they must at least act with circumspection and firmness. Putting aside graver matters for the present, let us see whether capital punishment is administered with that dignity and equality we should expect.

The mere fact that a man who is hanged in one part of the country should escape in another seems indecorous. In some States, Wisconsin and Michigan, for instance, there is no capital punishment. A man is hanged in New Jersey for killing his mistress's paramour; while a person in Michigan who might murder and horribly mangle a whole congregation, pastor, Sunday-school, and infant class, would get off with imprisonment for life. This is a mere accidental difference in State laws, but there are other social differences which are more radical and necessary. The farther you go west the harder it is to condemn a murderer to death. Capital punishment exists by law both in Leavenworth and in Boston. Yet in many cases where the same crime has been committed, the convicted man would suffer in Boston and escape in Leavenworth.

Then, again, culprits are hanged at certain times who would not be hanged at others. When murder has been very general and people are angry or alarmed, the criminal will have less chance of escape than when the community is unconscious of insecurity. When two men are to suffer at the same time in the same State, the likelihood of commutation of the sentence of either by the governor is slight. Both Twitchell and Eaton, who were convicted of murder a few years since in Philadelphia, would perhaps have escaped death, had their crimes fallen at different times. Both were convicted on circumstantial evidence. Twitchell's murder was an exceptionally brutal one, but he was defended by a very able, influential, and indefatigable man. Eaton's guilt was not so great nor so clear. The governor was one of those imitators of Brutus who think it an impressive and distinguished thing to hang some-

body. He would not have dared to reprieve both, though he might not have hanged Eaton had Eaton been alone. But as he was pressed very energetically in Twitchell's behalf, it was the natural, though unconscious, concession to that gentleman's friends to hang Eaton.

Again, much would depend upon the mere accident of a governor's personal character, whether he was a clear-headed, firm man, or a soft, weak man, or an obstinate, conceited, heartless man. There is no doubt that popularity will be considered by governors in this as in other matters. Pardons are supposed to be unpopular, and governors, with that sensibility to indefinite alarm common to office-holders, are often afraid to interfere. An executive who was a candidate for re-election would be less apt to commute a sentence of death than one who had no intention of taking office again. Just before an election he would be particularly careful not to confront what was or what he would think to be an offended public sentiment. Here the reader may think me inconsistent. I say that pardons may make governors unpopular, and yet I say that most people are opposed to capital punishment. This apparent contradiction is explained by the fact that people feel very differently towards hanged and unhanged criminals. We do not clearly enough perceive that criminals must either be hanged or not hanged,—that there is no middle course. We would like some arrangement by which both things could be done. Accordingly, when a murderer is reprieved, our nerves are not shocked by the spectacle of his execution, while we may satisfy our sense of justice by blaming and ridiculing the governor who reprieves him. It is true, also, that we dislike the mere idea of any mitigation of penalty for a convicted murderer. Were there no hanging, there would be no idea of mitigation when a criminal was sent to the penitentiary for life. It would be satisfactory to know that the culprit had suffered all the punishment we had it in our power to inflict. As the case stands at present, governors are wise in thinking that too many commutations of the death penalty will make them unpopular and ridiculous. The question of personal popularity will enter into the consideration of the act, along with the questions of justice and public policy.

It will not do to say that the governor is a mere executive machine, that his function is not a judicial one, and that his only business is to see the sentence of the law properly carried out. Practically, he is the umpire who has the culprit's life hanging upon the thread of his predispositions and his policies. There are cases in which he could decide at once, but very often it would happen that much could be said on both sides ; and when the mind is thus evenly balanced, we know how the slightest impulse or half-perception will turn it one way or another. I know of a case in which a governor, a half-educated man, was at a watering-place when compelled to come to a decision upon the fate of two persons under sentence of death. One was a boy of seventeen. The hotel formed itself into a kind of executive council, and the question was discussed in the walks, on the promenade, and at the dances. Some of the ladies warmly advocated reprieve ; while others, strange to say, took strong grounds on the other side. The mother of the boy came to see the governor,—an old woman, who got in everybody's way and sat about red and swollen. His Excellency was in great perplexity. He finally decided upon hanging. From what an eye-witness told me of the proceedings, I think his decision would have had quite as much intrinsic value had he tossed a copper and left the result to the chance of heads and tails.

There is yet a grosser inequality than any of these. We cannot shut our eyes to the fact that social position makes a difference. A man cannot easily be hanged who has a very good position in the community. It has been done in one or two cases, but the circumstances were peculiar. The causes of this immunity of the respectable people are twofold : first, a lack of thoroughness and tenacious adherence to principle among our people ; secondly, the inability of the immense comfortable middle class of the country to bring distinctly before them the sufferings of the very low. That young ladies who go to tea-parties and have accomplishments should lose a brother or father in such a way seems very dreadful. We do not so easily conceive the miseries of people who live in uncarpeted hovels. Another explanation is to be found in the *inertia* of an impression which once gets into the mind. That a man is

fortunate is a reason with us why he should continue to be so ; that he is unsuccessful is also a reason why he should continue to be so.

Republicans as we are, I believe there is no country where respectability claims so many immunities, and has them so instinctively accorded, as in America. If a man of wealth and respectability is put in the penitentiary, it is very difficult to keep him there ; not only because of the pressure brought to bear for his pardon, but because of the wide-spread commiseration his family receives from the public. To hang such a person would be next to impossible. If he committed some very exceptional crime, he might be hanged ; but for the same offence for which many a Hans and Patrick would suffer he would go free. Yet the root of this is not so much to be found in any particular respect for "good circumstances," as in our peculiar ability to pity. And we pity the lawyers and clergymen, and the well-to-do people of middle life, more than the Wares and the Eatons, because we know more about them, and have a more vivid notion of the sufferings such a death would entail upon them and their friends.

Another inequality is in the method of administering punishment. Some people are much better hanged than others. This may seem to be a fine point, but I am not so sure there is nothing in it. Men have always laid great stress upon the manner of execution. There must be as much difference between good and bad hanging as between most entirely distinct ways of inflicting the death penalty. A man who dies at once is certainly more fortunate than one who is compelled to suffer through some minutes of strangulation. In England, not more than a year ago, a culprit who had not the good luck to be one of Calcraft's patients, had his head torn entirely off. The hanging all over England is done by Calcraft, who goes about the country from place to place, wherever his services are needed. But in America the distances are too great for such an officer to get over ; and in remote localities they have to rely upon the best amateur talent the neighborhood can improvise. Hanging in our cities, I suppose, is pretty well done ; in the country it is often very badly done. This seems to constitute an advantage for the urban over the rural malefactor.

But the gravest inequality, the essential radical injustice, of hanging has yet to be stated. The punishment draws a circle of infamy and terror about the sufferer which is factitious, conventional, and untrue. As men stand before 'God, does anybody think judge and jury, counsel, sheriff, and culprit, have their proper places? I now remember a hanging which took place years ago in an American town. A very weak young fellow was accused of a murder and, on circumstantial evidence, convicted. There was but little doubt of his guilt. The district attorney, a man of notorious character, had made up his mind to hang him (as perhaps all district attorneys should), and had carried his point. This lawyer was very generally charged with peculation and bribery, and some other sins to which society is more lenient, for the reason that in their enjoyment the sinner hurts nobody but himself. I do not know that these charges were true, nor is it important that they should be; for we all know that persons occupying good positions may very well be guilty of such things. The prosecutor who was loudly applauded by the press for his vigilant attention to the public weal, not content with securing the murderer's conviction, seemed disposed to act as undertaker, and actually went with him upon the scaffold to see him hanged. To witness the last miserable hours which his own ability and energy had brought upon this wretch, the custodian of the public morals may, for all I know, have come straight from some brothel where he had spent the night. The body of the young murderer was handed to his sisters, while the district attorney went back to dine in the bosom of his family.

It is well that the reader should remind himself of how strange a thing it is to put a man to death. If one's gardener were going to be hanged, he would discover that he had all his lifetime been very ignorant of hanging. The sufferings of the gardener and of his wife and children would put the thing in quite a new light to him. He has, of course, known that men are hanged, and has read from time to time accounts of the executions in the newspapers; but he has never with his mental or bodily eyes really seen an execution. He does not, then, know what it is to be hanged. Immemorial custom and tradition have deprived him of the sense of how strange a

thing it is to put a perfectly well man to death. Darius once asked some Athenians, who were living at his court, what they thought of the practice of sons eating their dead fathers. The Athenians said they could conceive of nothing worse than to eat their dead fathers. He then asked some Scythians, who were there also, what they thought upon this point. They said they could conceive nothing worse than not to eat their dead fathers. We can get used to anything. That which coincides with the experience we accept without looking into, no matter how terrible: things comparatively trivial which cross rather than coincide with the experience shock us much more. Men are often shot, and nobody is very much surprised at the shooting of Ferré. He was not killed at the first fire, and the *coup de grace* had to be given him with a pistol. This again does not much surprise us, as the proceeding is not at all a rare one. But no sooner had he fallen, whirling round and tumbling upon his face, than two dogs, who had been running about the ground, sprang upon his body, and had to be torn off and driven away. This does shock us, and yet reason must tell us that it is a far more terrible thing that a perfectly well man should be deliberately put to death, than that dogs should spring upon and tear his dead body. For this very reason, then, of the terribleness of what is strange and unusual, it would be impossible to change the present method of punishment to something less severe. We might put men to death by a cloth of chloroform over the face. The reader, I am sure, recoils at the suggestion. What is the reason? Surely the punishment would be infinitely milder than suffocation or neck-breaking. One man may say that for that very reason he should reject it. Another may say that it would not suit the Saxon temper, that it savors more of the feline and insidious Latins. But in point of fact we recoil from its horribleness. It is more horrible to us than hanging, because its strangeness arrests our attention and forces upon our imagination the nature and the impressive incidents of the act.

But it may be said that the argument from imagination works both ways. If we do not know what it is to be hanged, neither do we know what it is to be murdered. If we are about to punish a garroter we must bring to our minds the suf-

ferings and sensations of his victim. On a dark night when the fellow's hand is at your throat and you get a near view of his hateful countenance, you may be sure you will think the gallows too good for him. The spot looks very different the next morning when you come to visit it in broad, secure daylight, and the incurious passer-by will regard the event as quite trivial. I see in the paper that a man has been murdered. The fact makes no impression upon me, represents nothing to my mind, but it would mean a great deal more to the man's brother. He would be a better judge of what murder is than I, because he would better understand its consequences. He knows the history of the life that has been destroyed. He knows what opportunities, what felicities, have been extinguished. He appreciates better the sufferings entailed upon the dead man's family and friends. He is therefore a better judge of the crime of murder than I. But, it will be answered, society already knows the terrible results of the murder, for it hangs the murderer; let us now understand the horribleness of hanging, and see if it be not in excess of what justice may demand. If we can discover no other punishment which is, in our apprehension, severe enough, it will make no difference in the result. Our principle is that we are not to punish guilt, but to prevent crime.

It may be said, too, that if we do not understand hanging, neither do we understand imprisonment or any other kind of punishment. No doubt, if we undertook to try any of these, we should find them very different from what they seemed from the outside. But it must be a very perverse man who refuses to see that the death penalty differs from any other sort of punishment. The incarcerated sufferer can tell his own story; we can look through the bars and see him. But who knows the last agony of the death struggle? Who knows its *real* duration in the opinion of him who is the last judge? Who can conceive decapitation? Who can understand strangulation? Who knows through what a universe of misery flashes or struggles the soul of the sufferer? When we put a man to death we simply take advantage of that power which we hold in common with the beasts of the forests, with the insensible stone, with the earthquake and the hurricane and the forces of

nature itself, — the power to inflict suffering utterly beyond our ken and understanding. I have sometimes thought of a court-martial of gorillas, that in the depths of Central Africa might sit in judgment upon Dr. Livingstone, and it seems to me that such a tribunal would in some respects resemble a modern court of justice. The judge and jury, indeed, are not gorillas, neither is the culprit Dr. Livingstone. But one most essential feature the two things would have in common, — ignorance of what they are about to do. Do the gorillas know the effect of their deed in that far-away English home, the sympathy of Christendom, and the innumerable obituaries in all the newspapers? But is our ignorance and foolhardiness any the less when we presume to lay our hands upon the awful mysteries of death and immortality?

Some very superior people would no doubt think this a contemptible way of approaching the subject. “The London Spectator,” a few days before Margaret Waters’s execution, in a very offhand manner advised Mr. Bruce to pay no attention whatever to the petitions for her reprieve. The “Spectator” admired itself, and thought it fine that such decision of character and practical adherence to theory should exist in a journal otherwise so humane, liberal, and enlightened. On the evening of the day of the execution, a letter appeared in “The Echo” from a man who had witnessed the woman’s death, and who signed himself, “One who up to this morning believed in capital punishment.” This man excited the profound contempt of the “Spectator.” “His opinions must have been very poorly grounded, if the realization of Margaret’s sufferings caused him to change them,” was the drift of its criticism. But the man was right enough, or he could have been, had he retorted that he did not believe there was anything in the present condition of society to render necessary the horrible act he had witnessed. He saw Margaret Waters, leaning upon Calcraft’s arm, enter the gate of the court-yard; saw her standing upon the trap-door, her lips moving while the chaplain prayed; and then, when the moment came, saw the whole machine “fly all to pieces” and the woman suspended in the air. He thinks we had better dispense with this kind of thing, and the “Spectator” ridicules him for his weakness. Yet half a dozen reflec-

tions like the following would have made his method of thought sound, even according to the standard of the "Spectator." If murders are many, it proves that hanging does not prevent them ; if murders are few, there is no need of resorting to such extreme means in dealing with them. We have no experience which shows that murders increase when hanging is abolished. We have the histories of states and empires that have done away with it, and do not return to it. Its enemies are practical ; its friends, *a priori* and theoretical. The thing itself is very horrible, and the time has come to try if we cannot do without it. Moreover, we can devise some very unpleasant things for malefactors, if we but tax our ingenuity a little. Society makes it hard enough for some of us, by merely minding its own business and letting us alone. What could it not do, if it set itself to work to make things disagreeable. At the worst, if our experiment fails, we can go back to hanging or burning or anything else. Trust the Anglo-Saxon to take care of himself ; he has done it heretofore, and he will continue to do it !

I have made use in this paper of what may appear to be a kind of bravado. In writing upon this subject one is impelled to tell the bare truth with a certain recklessness, — to describe the scenes and incidents of the gallows as nakedly as possible and with very few expressions of sympathy or horror. I have not repressed this impulse, because I have thought it might be the best way to quicken the imagination of the reader to the realities of hanging. I would state, however, that any man who is hanged, just at present, calls for our sincere commiseration and sympathy. Had he been born twenty years later into the world, or had his crime fallen twenty years later in life, he would not have been hanged. His especial misery consists in the fact that he came so near not being hanged. I look upon him as the unhappy victim of one of the levities of Fate, than which she has no moods more terrible.

The immediate abolition of capital punishment by the legislature of any Eastern State is hardly to be expected. I have said that some imagination is needed to possess a clear idea of what it is to be hanged ; legislators have no more of that quality than most other people. The few sensitive enough to know the realities of hanging have not the self-confidence to

act upon their impressions and to proclaim their opinions in apathetic or indistinct moments. Such persons, besides, are not simultaneous in their impressions. Where one sensitive legislator reads the morning's account of yesterday's execution, and feels what an unpleasant thing it is to be hanged, he is quieted by the apathy of persons who are not sensitive, or, if sensitive, are not just then in their sensitive moods. It must be said, too, that legislators should, as a rule, follow in the wake of popular thought, and the public has not yet distinctly expressed its will that hanging is to be abolished. There are certainly some other things to be done more imperative than the abolition of the death penalty. But still, I believe, if some venturous legislator should carry through a bill to do away with it, the public would generally acquiesce, and the act would be even more popular than it would seem to be. If such a measure is passed now, instead of next year, a neck or two will be saved thereby ; if now, instead of ten years hence, quite a dozen of them ; which dozen necks will, I believe, if sacrificed, contribute in no respect to the welfare and stability of the Commonwealth.

E. S. NADAL.

ART. VII. — MIXED POPULATIONS OF NORTH CAROLINA.

It has been the fashion in this country to deplore the want of individuality in the characteristics of different parts of our land ; it has been said so often, that belief has readily followed, that we are wearers of a social uniform, and our land the region of interminable monotonies. The good people over the water, who live on the ragged edge of the great Asiatic continent, have been accustomed to reiterate these opinions with a persistence which has led to their adoption in this country. There is no doubt a massiveness in the grouping of the feature lines of America, which, to the eye which has had its habit formed on the sharp contrasts of Europe, may give the impression of uniformity. Those who have not the judgment to perceive that each of these majestic individualities we call continents must be judged by separate canons of criticism, who cannot see that